Statement

Insurance Association of Connecticut

Judiciary Committee

March 5, 2014

HB 5450, An Act Concerning Arbitration In Motor Vehicle Accident Cases

The Insurance Association of Connecticut, IAC, is strongly opposed to HB 5450, An Act Concerning Arbitration In Motor Vehicle Cases as it unfairly seeks to abolish the use of the collateral estoppel rule, only as it applies in certain cases.

As written HB 5450 would eliminate the use of the collateral estoppel rule as it applies to personal injuries cases arising from motor vehicle accidents in which the parties have voluntarily chosen to use binding arbitration. The proponents claim HB 5450 restores status quo, but then why limit it to certain types of cases, and just to the award? Arbitrators render decisions on a whole host of cases and on matters more than just the awards. HB 5450 does not "restore status quo" but destroys it.

HB 5450's stated purpose is "to permit parties to a civil action to elect to have a matter referred to an arbitrator" however, parties in any civil action, including those involving personal injuries sustained in a motor vehicle accident, are currently able to agree to have a matter referred to an arbitrator. The crux of HB 5450 lies in the last sentence of the proposal: "The award of the arbitrator, if any, shall not be used by or against any party to the arbitration in any subsequent civil action or proceeding." (HB 5450 Lines 8-10) The effect of that language is to eliminate the collateral estoppel rule as

it relates to awards entered in binding arbitration in motor vehicle personal injury actions; mainly underinsured motorist (UIM) insurance coverage claims.

Collateral estoppel prohibits the relitigation of an issue when that issue is actually litigated and necessarily determined in a prior action. Marques v. Allstate, 140 Conn. App. 335, 339, 58 A.3d 393, 396 (Jan. 22, 2013) citing Connecticut Natural Gas Corp. v. Miller, 239 Conn. 313, 324, 684 A.2d 428 (2006). The doctrine may be invoked offensively, in support of a party's affirmative claim against another party, or defensively when a defendant in a subsequent action seeks to prevent a plaintiff from relitigating an issue that the plaintiff has previously litigated in another action. See Gionfriddo v. Gartenhouse Café, 15 Conn. App. 393, 404,545 A.2d 284 (1988) aff'd 211 Conn. 67, 557 A.2d 540(1989). The collateral estoppel rule applies to binding arbitration proceedings. LaSalla v. Doctors' Assocs., 278 Conn. 578 (2006). HB 5450 seeks to change the status quo by eliminating the use of collateral estoppel as it relates to an arbitrator's award.

For a party to be bound by the prior adjudication, or estopped, the party had to have a full and fair opportunity to litigate. Marques supra. Parties participating in binding arbitration do so voluntarily. The level of participation is fully within the party's control knowing they are bound by the decisions rendered by the arbitrator. Should a party decide to "hold back" and present only part of their claim, they assume the risk. That is status quo.

In the Marques matter the parties agreed to arbitrate the case. The parties submitted the case to binding arbitration and presented their case to an arbitrator to decide the value of the plaintiff's claim. The parties put forth their evidence and the arbitrator made a determination as to the full value of the plaintiff's claim. The plaintiff

then sought to pursue a UIM claim, however, based on the full value of the plaintiff's claim as determined by the arbitrator, the claim did not trigger the UIM coverage. Because the plaintiff had an opportunity to litigate the value of the claim before the arbitrator , the UIM carrier used collateral estoppel defensively against the plaintiff as is permitted by law. The courts in the Marques matter simply explained current practices, thus maintaining the status quo, upholding the insurer's use of collateral estoppel.

To eliminate the use of collateral estoppel will permit a party an opportunity to relitigate the same issue twice, with potentially different and conflicting results. There is no compelling reason to erode well-established doctrines to permit a party to retry the same issue multiple times – further burdening the justice system

To preserve fairness and maintain the status quo, the IAC urges your rejection of HB 5450.